

FINAL REPORT

Funeral Directing and Embalming Periodic Regulatory Evaluation Process (PREP)

From:

Funeral Directing and Embalming PREP Committee

To:

Richard P. Nelson, Director
Department of Health and Human Services Regulation and Licensure

October 21, 2004

NEBRASKA HEALTH AND HUMAN SERVICES SYSTEM



DEPARTMENT OF SERVICES • DEPARTMENT OF REGULATION AND LICENSURE • DEPARTMENT OF FINANCE AND SUPPORT
Funeral Directing and Embalming PREP Committee – Report – October 21, 2004

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Executive Summary

2004 Funeral Directing and Embalming PREP

The Funeral Directing and Embalming PREP Committee met seven times and made six affirmations and 11 recommendations.

Affirmation #1: The Board of Funeral Directing and Embalming has worked with others (the Department, Nebraska Funeral Directors Association) in a review of draft rules and regulations that make significant changes in qualifications to obtain and maintain a credential. The changes will make credentialing more effective and efficient. Areas of special note are:

- continuing competency
- reciprocity (relaxes requirements if professional has multi-year tenure in another state)
- inspections
- area of unlicensed personnel (enforcing what is already in place)

Affirmation #2: The Board of Funeral Directing and Embalming has a good relationship with the Nebraska Funeral Directors Association. The board and association have been able to work through issues, some of which have been of concern for years. Both parties should continue to work at improving and continuing this relationship.

Affirmation #3: The Board of Funeral Directing and Embalming has a good relationship and open communication with the Department. The two have worked together on a number of issues successfully over the years.

Affirmation #4: Involvement by Nebraska professionals at the national level has a positive impact on the profession. The Nebraska Funeral Directors Association is actively involved in state and national regulation development. State representatives have been active at the national level for many years.

Affirmation #5: The Board of Funeral Directing and Embalming has an important role in regulation. The board provides essential professional advice to the Department and credentialing staff in matters of the profession's practice, relevant questions on discipline, licensure issue, and facility inspections. The board also supplies interpretation to the rules and regulations for the profession and works on necessary revisions and improvements.

Affirmation #6: The Board of Funeral Directing and Embalming is willing to take on challenges and be expansive – witness volunteering for the PREP pilot.

Recommendation #1: Initial licensure education requirements should be improved. Change the specific education requirements to eliminate in statute the number of required hours and leave only the requirement of certain classes (i.e., keep in the statute that chemistry is required; however, do not mandate the number of required hours).

Recommendation # 2: The national standardization of funeral directing and embalming education (school curriculums) is a long-term goal that Nebraska should continue to support.

Recommendation #3: There is a need for periodic on-site inspections, and the process to assure that on-site inspections take place needs to be improved. The draft rules and regulations make some changes that should improve the process. The Committee recommends the draft rules and regulations be given time to be implemented and evaluated.

Recommendation #4: The Nebraska Funeral Directors Association should study options for incorporating the Funeral Rule into Nebraska statute to see what benefit, if any, exists for public protection. The Funeral Rule is designed to protect the public.

Recommendation #5: State agencies should coordinate and communicate better in areas that impact this profession (pre-need/Department of Insurance; Medicaid/Department of HHS Finance and Support; EPA/Department of Environmental Quality).

Recommendation #6: The Department should implement the concepts found in the Nebraska Credentialing Reform (NCR) Compliance Assurance Proposal dated August 2001.

Recommendation #7: The Department should publish a “Complaint Brochure” providing an easy-to-read and understandable explanation of the complaint and discipline process for the public and the professional.

Recommendation #8: The Board of Funeral Directing and Embalming should increase from four members to five members.

Recommendation #9: Funeral Directors and Embalmers should continue to be licensed by the State of Nebraska in the interest of public protection and because of the sensitivity surrounding death.

Recommendation #10: Consider evaluating regulatory options for private cemeteries in Nebraska in the interest of public protection relevant to perpetual care funds. Considerations could include putting in place statutes, rules and regulations for private cemeteries in Nebraska.

Recommendation #11: The pre-need statutes could be updated and revisions made so that the statutes are more effective, efficient and pre-need is self-supporting.

Introduction

Periodic Regulatory Evaluation Process (PREP) is a product of Nebraska Credentialing Reform (NCR). In January 1999 a report, “A Model for the Regulation of Health Care Professions by State Government in Nebraska: Part 2 of the Study Directed by LB 183” was published after many months of work by the NCR 2000 Steering Committee. The Legislative study was to result in a comprehensive design for a model system for the credentialing and regulation of health care practitioners and providers in Nebraska. The report contained 144 recommendations for the regulatory system.

The Department of Health and Human Services Regulation and Licensure has been working to implement many of the NCR recommendations. Involvement by the public, professional organizations and credentialed individuals is and continues to be important to the implementation process. The Periodic Regulatory Evaluation Process (PREP) was designed as part of the NCR implementation project for the periodic review of the regulatory system for health professions and occupations that are currently credentialed by the Department. Several recommendations in the NCR report supported PREP. Key concepts contained in the report were:

- a) A quality assurance and improvement mechanism for the credentialing or regulatory system is critical.
- b) Before a health profession is regulated, and periodically thereafter, there is a need to demonstrate that such regulation is in the best interests of the public.
- c) Public and customer involvement in the evaluation of the regulatory system will be essential.
- d) A model regulatory system should protect the public from harm; provide an efficient, flexible, and adaptive regulatory process; provide uniform consistency of practice standards and regulatory procedures; and provide system accountability.

In this report the term *credentialing* encompasses licensure, registration, and certification. In the NCR implementation work there has been a great deal of discussion about the regulatory system. The *regulatory system* has been defined as the programs and procedures pertinent to the state’s administration, monitoring and discipline of persons or establishments possessing some form of license, registration or certification from the state to provide health care and/or environmental services. The terms *regulatory system* and *credentialing system* are interchangeable as used in the NCR project.

Credentialing – from the National Perspective:

Today professions credentialed by states are encouraged to support nationally accepted standards and uniform definitions. This is apparent in standards of practice definitions, school curriculums, education requirements, and examinations for initial licensure.

Some professions have developed model practice acts and encourage states to adopt the model practice acts.

Many of the national reforms have been encouraged and documented by the Pew Health Professions Commission. In December 1995 the organization published *Reforming Health Care Workforce Regulation: Policy Considerations for the 21st Century*. Since then, a 1998 publication, *Strengthening Consumer Protection: Priorities for Health Care Workforce Regulation*, has expanded on issues.

Created by [The Pew Charitable Trusts](#) in 1989, the Pew Health Professions Commission has developed recommendations for change in health professions education and advocated the development of policies which respond to the nation's health care workforce needs. The Commission has initiated and sustained what many believe to be a national movement for change in the health professions education and workforce policy.

The 1995 report included ten recommendations that were a part of the orientation for the PREP Committee. From the report introduction [page vi-vii]:

“Health care workforce regulation has developed over the last century into fifty separate state systems creating a complex and often irrational organizational patchwork. The lack of uniformity in language, laws, and regulations between the states limit effective professional practice and mobility, confuses the public, and present barriers to integrated delivery systems and the use of telemedicine and other emerging health technologies...Current statutes grant broad, near-exclusive scopes of practice to a few professions and “carved-out” scopes for the remaining professions. These laws erect unreasonable barriers to high-quality and affordable care...Perhaps most seriously, regulatory bodies are perceived as largely unaccountable to the public they serve...Finally, recent reports and incidents have raised concerns that the regulatory system may not effectively protect the public. Continuing education requirements do not guarantee continuing competence. Additionally, the complaint process is often difficult for the consumer to initiate, and many complaints go without adequate investigation. Moreover, regulatory systems, in large part, have failed to implement mechanisms to evaluate their effectiveness and correct shortcomings.”

Many states have decided that now is the time to make changes, big and small, in their regulatory systems. The Nebraska credentialing reform effort will be a major change in the state’s regulatory system when completed.

PREP

The Periodic Regulatory Evaluation Process (PREP) has been developed for use with professions and occupations currently credentialed by the Department of Health and Human Services Licensure and Regulation. PREP’s purpose is to evaluate the impact of the State regulatory process and outcomes on public protection and to look at the quality

of that process. Based on existing statutes, PREP will review the regulatory efficiency, the current regulation, the affect of regulation, and the need for regulation of the profession or occupation. The review or evaluation may result in recommendations for how the regulatory system can be improved and/or affirmation of things well done. The Department conducted two pilot PREPs and evaluated the process once both pilots were completed. The PREP evaluation focused on identifying whether the process supported or enhanced the regulatory system and how the process could be improved.

PREP is not a sunset. A sunset is the automatic termination of regulatory boards and agencies unless legislative action is taken to reinstate them. PREP is a quality improvement mechanism for the Department and is designed to be a non-threatening and non-adversarial approach. PREP uses topic areas to focus the committee discussions. The product of PREP is a report to the Department Director that is a public document.

Quality improvement, quality assurance and continuous quality improvement are all terms used for quality. Quality not only is efficiency and effectiveness and the achievement of outcomes, but quality can also be defined as the best possible application of knowledge to be as successful as possible.

It is vital to PREP that the purpose of regulation is understood. As explained to the PREP committee, the purpose of regulation is to:

- Ensure that the public is protected from unscrupulous, incompetent and unethical practitioners;
- Offer some assurance to the public that the regulated individual is competent to provide certain services in a safe and effective manner; and
- Provide a means by which individuals who fail to comply with the profession's standards can be disciplined, including the revocation of their licenses.

Process

PREP is divided into four broad steps in the pre-pilot documentation.

Step 1: Selection of the profession or occupation to be evaluated.

The Department sent out a mailing on May 20, 2003 to the NCR Committee, State Board of Health, contacts within the Nebraska Funeral Directors Association and other health professional associations identified by the Department. Included in that mailing were the notification of the funeral directing and embalming pilot PREP, an explanation of PREP and a request for committee member nominations by June 9, 2003.

Step 2: Appointment of PREP Committee.

The Department Director appointed ten people to serve on a PREP Committee. All members of the committee are voting members and expected to actively participate.

Funeral Directing and Embalming PREP Committee Members

Laurie K. Baedke	<i>public representative</i>
Michael Wayne Beard	<i>public representative</i>
Cliff Lant	<i>professional representative (resigned before final report was approved)</i>
William J. Lauber	<i>professional representative</i>
Dale L. Mahlman	<i>public representative</i>
Reverend Janet C. Morse	<i>related/associated profession representative</i>
Sue Semerena	<i>department representative</i>
Jerry Tickle	<i>professional representative - board</i>
LaDonna VanEngen, RN	<i>related/associated profession representative</i>
Jerry Vaughan, OD	<i>State Board of Health representative</i>

Step 3: Evaluation of the profession or occupation by the PREP Committee.

The Committee received research material supplied by Department staff. Sources for the research material were mostly the Internet and included such web sites as Nebraska Health and Human Services System (www.hhs.state.ne.us/crl/mhcs/fun/funeraldirecting.htm), the National Funeral Directors Association (www.nfda.org), and the General Accounting Office (www.gpoaccess.gov/gaoreports/index.html). Committee members provided additional information or clarification of research material. Self-assessment surveys completed by members of the Board of Funeral Directing and Embalming and the assigned staff person were compiled and the results presented to the committee (see attachment).

Public forums were held on August 20, 2003 in Lincoln and on August 26, 2003 in Kearney. Announcements were made at both forums that written comments would be accepted through September 2, 2003 and contact information was provided. The purpose of public forums, as explained in the pre-pilot PREP documentation, was to provide an opportunity early in the process for the PREP Committee to receive input on potential issues from interested stakeholders. There were three people at the public forums other than committee members or Department staff. A Committee member gave a brief presentation providing

some background on Funeral Directing and Embalming from the perspective of the Nebraska Funeral Directors Association.

The PREP Committee conducted their work in accordance with public meeting laws. Agendas for public meetings provided an opportunity for public attendees to comment. Throughout the course of the evaluation, notices of the committee public meetings were posted and a list was maintained of those wanting to receive the meeting agenda or notification about the funeral directing and embalming PREP.

Funeral Directing and Embalming PREP Committee meetings were held:

August 20 through August 26, 2003 orientation with committee members (small groups and one by telephone).

- November 5, 2003 with 8 committee members present.
- December 3, 2003 with 6 committee members present.
- January 15, 2004 with 7 committee members present.
- March 4, 2004 with 7 committee members present.
- April 1, 2004 with 7 committee members present.
- June 10, 2004 with 8 committee members present.
- September 2, 2004 with 7 committee members (one connected by phone).

During the evaluation, the Funeral Directing and Embalming PREP Committee explored and evaluated issues using eight topic areas as a focus for the discussions as explained in the “Recommendations, Affirmations, and Comments” section of this report.

Step 4: Preparation of a PREP Committee report.

The Funeral Directing and Embalming PREP Committee report contains affirmations, recommendations and comments relevant to significant committee discussions.

This final report is submitted to the Department of Health and Human Services Regulation and Licensure Director and is a public document. The Director may use the report to make changes in the regulatory system by adjusting administrative procedures, proposing legislative action or by proposing changes to rules and regulations. Report content may be used by anyone to initiate legislation, a Scope of Practice Credentialing Review, or other actions as they deem appropriate.

The terms “consumer” and “public” are interchangeable in the report and have been used as referenced in the research documents used by the Committee.

Status of Funeral Directing and Embalming in Nebraska During the PREP Review

Demographics

In Nebraska, there are approximately:

- 8 to 11 Full Apprenticeships (Full = consecutive 12 month apprenticeship) issued any one year
- 10 to 14 Split Apprenticeships (Split 1&2 = a 12 month split, meaning six months prior to attending an accredited School of Mortuary Science and six months following graduation) issued any one year
- 400 Funeral Director and Embalmer licenses
- 186 Funeral Establishments with Nebraska addresses (as of December 15, 2003)
- 105 Branch Establishments with Nebraska addresses (as of December 15, 2003)

Nebraska Regulatory Background

The rules and regulations for the practice of funeral directing and embalming have just been revised. Significant changes were made by the Board of Funeral Directing and Embalming to address concerns about reciprocity and inspections of funeral establishments. There have been technical updates and improvements to the act recently, including the implementation of statute changes in continuing competency and the method of calculating licensure fees.

The Department of Health and Human Services Regulation and Licensure has responsibility for credentialing health professions and occupations in the State of Nebraska. Credentialing means the totality of the process associated with obtaining state approval to provide health care services. Credentialing grants permission to use a protected title that signifies that a person is qualified to provide the service of a certain profession (State Statute 71-101 (9)).

The Board of Funeral Directing and Embalming is appointed by the State Board of Health and consists of four people: three professionals and one public member, and advises the Department on all issues related to the regulation of funeral directing and embalming. Board member duties include, but are not limited to: administration of licensing examinations; recommending the issuance or denial of licenses; changes in legislation and regulation, complaint screening and making recommendations on disciplinary actions.

All funeral directing and embalming licenses expire on February 1 of each even-numbered year and must be renewed.

A *license* grants the person a right to provide the services of the profession. This right is limited exclusively to those who have met specific requirements and educational

prerequisites and who have passed some type of examination indicating that they are capable of providing services safely and effectively.

Professional practice complaints can be filed with the Department's Investigations Division. All complaints are carefully reviewed by the Department to determine if legal sufficiency exists to conduct an investigation. The Department will notify complainants of the results of the review.

Nebraska Funeral Directing and Embalming Definitions

Funeral Directing means:

1. Counseling families or next of kin in regard to the conduct of a funeral service for a dead human body for burial, disposition, or cremation or directing or supervising burial, disposition, or cremation of dead human bodies;
2. Providing for or maintaining a funeral establishment; or
3. The act of representing oneself as or using in connection with one's name the title of Funeral Director, mortician, or any other title implying that he or she is engaged in the business of funeral directing. [172 NAC 67-002]

Embalming means the practice of preparing a dead human body for burial or other final disposal by a licensed Funeral Director and Embalmer or an apprentice, requesting and obtaining burial or removal permits, or assuming any of the other duties incident to the practice of embalming. Any person who publicly professes to be a Funeral Director and Embalmer or an apprentice shall be deemed to be practicing embalming. The performance of the following acts shall also be deemed the practice of embalming:

1. The disinfection and preservation of dead human beings, entire or in part; and
2. The attempted disinfection and preservation thereof by the use or application of chemical substances, fluids, or gases ordinarily used, prepared, or intended for such purposes, either by outward application or such chemical substances, fluids, or gases on the body or by introducing them into the body, by vascular or hypodermic injection, or by direct introduction into the organs or cavities. [172 NAC 67-002]

Funeral Establishment means a place of business situated at a specific street address or location, devoted to the care and preparation for burial, disposition, or cremation or to conducting or arranging funeral services for dead human bodies. [172 NAC 68-002]

Funeral Branch Establishment means a place of business situated at a specific street address or location which is a subsidiary of a licensed funeral establishment, which contains a casket display room (displaying either by catalogue or merchandise), a viewing area, or an area for conducting funeral services, or all of them, and where any portion of the funeral service or arrangements for the disposition of a dead human body is conducted. [172 NAC 68-002]

Funeral Services mean any rite or ceremony pertaining to a dead human body. [172 NAC 68-002]

All funeral establishments will receive an initial and thereafter, a routine inspection. The criteria for inspection required by the Department and Board of Funeral Directing and Embalming is set forth in 172 NAC 68-009.

- The Department may conduct an on-site inspection at any time it deems necessary. [172 NAC 68-009.05 2004 revision]
- Every two years, the Department may conduct an inspection of up to 25% of the establishments based on a random selection. [172 NAC 68-009.06 2004 revision]
- The Department may conduct an inspection of an establishment when the Department is informed of one or more of the following:
 1. The passage of 6 years without an inspection;
 2. A complaint alleging a violation of 172 NAC 68-009.01 to 68-009.02;
 3. Change of services or location; and
 4. Any other event that raises concerns about the maintenance or management of the establishment. [172 NAC 68-009.07 2004 revision]

The term pre-need is used in this report. The Nebraska Department of Insurance administers the Burial Pre-Need Sale Act.

- Pre-need sale means any sale by any pre-need seller to a pre-need purchaser of:
 - a) Any items of burial or funeral merchandise or services which are not purchased for the immediate use in a funeral or burial of human remains;
 - b) Any unspecified items of burial or funeral merchandise or services which items will be specified either at death or at a later date; or
 - c) A marker, monument, or lettering which will not be delivered within six months of the date of the sale. [NE statute 12-1102]
- Pre-need seller shall mean any person, partnership, limited liability company, corporation, or association on whose behalf pre-need sales are made to the general public [NE statute 12-1102]. No pre-need seller shall make or offer to make a pre-need sale without first obtaining a license from the Director [NE statute 12-1108].
- Burial or funeral merchandise or services shall mean all items of real or personal property or a combination of both or services, sold or offered for sale to the general public by any pre-need seller, which may be used in any manner in connection with a funeral or the internment, entombment, inurnment, or other alternate disposition of human remains. Such term shall not include a lot or grave space or a crypt or niche located in a mausoleum, columbarium, or lawn crypt upon which construction has been substantially completed [NE statute 12-1102].

Perpetual Care means the general care, maintenance and embellishment of a cemetery. Perpetual care funds can be established for this purpose.

General Background Information

Federal Regulation

The federal government has a role in the regulation of the funeral industry. The Federal Trade Commission (FTC) Funeral Rule went into effect on April 30, 1984. The FTC has revised the Rule, and these revisions were effective on July 19, 1994. The Funeral Rule requires all funeral providers to give consumers accurate, itemized price information and various other disclosures about funeral goods and services. In addition, the Funeral Rule prohibits:

- Misrepresenting legal, crematory, and cemetery requirements;
- Embalming for a fee without permission;
- Requiring the purchase of a casket for direct cremation;
- Requiring consumers to buy certain funeral goods or services as a condition for furnishing other funeral goods or services; and
- Engaging in other deceptive or unfair practices.

If a funeral provider violates the Funeral Rule, he/she may be subject to penalties of up to \$10,000 per violation. Under the Funeral Rule:

- A funeral provider is defined as someone who sells or offers to sell both funeral goods and funeral services (both types as defined below) to the public.
- Funeral goods are all products sold directly to the public in connection with funeral services;
- Funeral services are services used to care for and prepare bodies for burial, cremation, or other final disposition; and services used to arrange, supervise, or conduct the funeral ceremony or final disposition of human remains.

The General Price List (GPL) is the keystone of the Funeral Rule. It must contain identifying information, itemized prices for the various goods and services that you sell, and other important disclosure. The GPL must be given to anyone who asks, in person, about funeral goods, funeral services, or the prices of such goods or services. The triggering event for giving out the GPL is a face-to-face meeting that can occur anywhere, not just at the funeral home.

In August 2003, the United States General Accounting Office (GAO) released a report titled “*Death Care Industry*”. The report was generated because federal policy makers are interested in whether the federal government should take on a greater role in regulating the death care industry, primarily funeral homes, crematories, cemeteries, pre-need sales of funeral plans, and third party sales of funeral goods.

GAO’s research showed that states vary in their approach to regulating the death care industry. States also vary in the mechanisms they have and can use to enforce regulations in the death care industry to protect consumers. The majority of states regulate funeral homes, crematories, cemeteries, and pre-need sales of funeral plans, although the specific licensing requirements vary across the states. Fewer states regulate third party sales of funeral goods, and even in those states that regulate each industry segment, not all businesses or practitioners may be subject to licensing or regulation. Most states also

require inspections of funeral homes and crematories, but fewer states require inspections of cemeteries.

In Nebraska, the regulatory responsibility for funeral homes, crematories, and pre-need sales of funeral plans are assigned to specific state agencies in Nebraska statutes (Department of Health and Human Services Regulation and Licensure – funeral homes and crematories; Department of Insurance – the sale of funeral plans/pre-need). The regulatory responsibility for cemeteries is not assigned to a specific state agency in Nebraska statutes.

There are only a few cemeteries in Nebraska that administer perpetual care funds. Most cemeteries are taken care of by taxpayers and are municipal, religious or family. The public and municipal cemeteries are tax-supported, and church or religious cemeteries typically do not collect money in perpetual care funds.

Pre-need

Pre-planning of funeral arrangements is a large part of the death industry in the United States; accordingly, it has a big impact on funeral directors. In Nebraska, this activity is regulated by the Department of Insurance and is called pre-need.

The Nebraska Department of Insurance information about pre-need [From NE Department of Insurance Pre-need Trust Brochure] includes:

- What is pre-need? Pre-need is the purchasing of burial or funeral merchandise (casket, vault, monument, etc.) or services by a member of the general public prior to the time of death.
- How is the sale of pre-need services and/or merchandise financed? The purchase of pre-need services and/or merchandise may be financed one of three ways: a. Life Insurance; b. Annuity Contract; c. Pre-Need Trust.
- What is a pre-need trust? When a pre-need sale is made, funds from the sale are placed in a federally insured bank within the state of Nebraska until the time of death. These funds may be placed in either an individual trust account or a master trust account, a pool of many individual trusts.
- What are the requirements for a pre-need trust? Upon making a pre-need sale, a pre-need seller is required to complete a written agreement and maintain a separate record of each pre-need trust sold. Pre-need trust funds, equaling at least 85% of the retail sales price of the trust, are required to be deposited in a federally insured Nebraska bank within 60 days after receipt. The remaining amount, up to a maximum of 15% of the retail sales price, may be retained by the seller of pre-need to offset administration of the trust.
- Is there more than one type of pre-need trust? Yes. There are two types of pre-need trusts, irrevocable and revocable.
- What is the difference between the two types of pre-need trusts? Funds placed in an irrevocable pre-need trust may not be withdrawn until the time of death. Funds placed in a revocable pre-need trust may be withdrawn at

anytime. The irrevocable pre-need trust is primarily used to finance services and has a maximum amount of \$3,000. The revocable pre-need trust is used primarily to finance merchandise and has no maximum amount.

- Who sells pre-need trusts? The establishments which sell pre-need trusts are funeral homes, cemeteries, and monument companies. In order for these establishments to engage in the sale of pre-need trusts, they must first obtain a pre-need seller's license. In addition, individuals, engaging in the sale of pre-need trusts, must be licensed as agents for their designated establishments.
- Who can be the Trustee? A financial institution (some exceptions exist) within the state whose deposits are insured by the FDIC.
- Who issues licenses and regulates the sale of pre-need trusts? The regulation of the pre-need trusts, including the issuing of pre-need seller and agent licenses, is handled by the Nebraska Department of Insurance.
- How does the Nebraska Department of Insurance regulate pre-need sellers? Pre-need sellers are subject to departmental examination and required to file an annual pre-need sales report with the department. In addition, the department is constantly reviewing its licensing records to ensure that all sellers and agents have current and active licenses.
- Can the general public contact the Nebraska Department of Insurance regarding a pre-need seller's or agent's license? Yes. In fact the department recommends that the individual ask to see a seller's license or check with the department regarding a pre-need seller's license before entering into a pre-need sale.
- Does the Nebraska Department of Insurance handle consumer complaints against pre-need sellers or agents? Yes. The department handles all pre-need related areas, including consumer complaints.
- How does an individual file a complaint with the Nebraska Department of Insurance? A pre-need complaint form must be completed and submitted to the department, along with any supporting documentation.
- How can an individual obtain additional information about pre-need trusts? Additional information regarding pre-need trusts can be obtained by contacting the Nebraska Department of Insurance.

The National Funeral Directors Association has published the "Model Consumer Protection Guidelines For State Pre-need Funeral Statutes" [second amended on October 18, 2003]. The guidelines include information on:

- Pre-need consumer contract disclosures (including whether the price of the funeral contract is guaranteed by the pre-need seller and which goods and services are covered by the price guarantee and which are not);
- Pre-need trusting requirements (including that 100 percent of the pre-need funds paid by the purchaser to the seller shall be deposited and remain in trust);
- Licensing of pre-need sellers and agents (including that the applicant for a pre-need agent license must successfully pass an examination administered by the state licensing agency on pre-need laws and regulation);

- Solicitation of pre-need consumers;
- Revocation of pre-need funeral contracts; and
- Pre-need guaranty funds (state pre-need laws and regulations should provide for the funding and administration of a pre-need consumer guaranty fund, the purpose of which would be to provide restitution to a purchaser of a pre-need funeral contract in the event of a default by the seller).

Evaluation

Committee Affirmations, Recommendations, and Comments

The six topic areas considered by the Funeral Directing and Embalming PREP Committee are listed below. Two topic areas were added to the list and considered during this pilot phase. While there are eight topic areas, they do not “stand alone”. There is some crossover and merging of topics and issues. While something may be identified under one topic area, it may also be a part of other topic areas. Affirmations, recommendations, and comments are listed with the first appropriate topic area.

Topic Area I Considered

I. Qualifications to obtain and maintain the credential.

- **Qualifications – standard for entry:** A regulatory system outcome is that the qualifications for the credential are sufficient to ensure the public/consumer that the funeral director and embalmer can safely perform the work identified in the scope of practice and that the funeral establishment is managed properly. The standards for entry should be appropriate to protect the public/consumer and be job-related. The education and training required should prepare the funeral director and embalmer for actual work. The process for validating qualification requirements for the funeral director and embalmer should be sufficient and efficient.
- **Qualifications – measure for maintaining:** A regulatory system outcome is that funeral directing and embalming has established requirements to ensure that the funeral director and embalmer demonstrates continued competency. The measure for maintaining a credential should demonstrate continued competency. Sufficient opportunities for continuing competency should be available, varied and appropriate for the practice of funeral directing and embalming. The regulatory system and processes should consider how changes in the practice of funeral directing and embalming (new technology, new procedures) impact on continued competency.
- **Qualifications – practitioner mobility:** A regulatory system outcome is that funeral directing and embalming has processes in place to ensure public/consumer protection while supporting interstate mobility of the funeral director and embalmer. Considerations are the affect of Nebraska regulation on the funeral director and embalmer’s ability to change practice settings to another state or

from another state. Differences from state to state in funeral directing and embalming requirements for education, initial licensure and continued competency can create a system where funeral directing and embalming mobility is complicated and discouraged.

Topic Area I Discussion

The Funeral Directing and Embalming PREP Committee considered Nebraska statutes and regulations pertaining to: standards or requirements to receive an initial credential; measures or requirements for maintaining an active credential; and the mobility of a credential – does the Nebraska regulatory system have a negative impact on a credentialed individual moving from Nebraska to another state or from another state to Nebraska? The committee looked at the initial licensure requirements for other states and found there is a lack of uniformity. Funeral Directing and Embalming does not have national standards in place for licensure requirements or education. This can sometimes cause problems when moving from state to state.

Topic Area I Response

Affirmation #1: The Board of Funeral Directing and Embalming has worked with others (the Department, Nebraska Funeral Directors Association) in a review of draft rules and regulations that make significant changes in qualifications to obtain and maintain a credential. The changes will make credentialing more effective and efficient. Areas of special note are:

- continuing competency
- reciprocity (relaxes requirements if professional has multi-year tenure in another state)
- inspections
- area of unlicensed personnel (enforcing what is already in place)

Recommendation #1: Initial licensure education requirements should be improved. Change the specific education requirements to eliminate in statute the number of required hours and leave only the requirement of certain classes (i.e., keep in the statute that chemistry is required; however, do not mandate the number of required hours).

Comment on recommendation #1: This would allow flexibility to adjust requirements in the future to accommodate national trends and changes in school curriculum. The change should encourage more appropriate preparation for the actual work of a funeral director and embalmer.

Recommendation # 2: The national standardization of funeral directing and embalming education (school curriculums) is a long-term goal that Nebraska should continue to support.

Comment on recommendation #2: This currently has significant effect on funeral directors moving from state to state.

Recommendation #3: There is a need for periodic on-site inspections and the process to assure that on-site inspections take place needs to be improved. The draft rules and regulations make some changes that should improve the process. The Committee recommends the draft rules and regulations be given time to be implemented and evaluated.

Comment on recommendation #3: Not all of the required on-site inspections are taking place. If the draft rules and regulations do not result in periodic on-site inspections, the board should consider involving the Nebraska Funeral Directors Association (NFDA) and contracting with individual NFDA members identified and recommended by the NFDA to conduct inspections. Should that not be feasible, consider the hiring of a state inspector (state employee) and contracting with county health departments that are willing to inspect (larger county health departments may be willing). The costs for a state inspector along with the personnel impact for the agency may impact implementation; however, with the recent change (lowering) in licensing fees, the funding of a state inspector for an every-other-year inspection may not be cost prohibitive. The agency would still need to meet staffing goals established in conjunction with the Governor's office.

From the draft rules and regulations: "Every two years, the Department may conduct an inspection of up to 25% of the establishments based on a random selection. The Department may conduct an inspection of an establishment when the Department is informed of one or more of the following: 1) The passage of 6 years without an inspection; 2) A complaint alleging a violation of 172 NAC 68-009.02; 3) Change of services or location; and 4) Any other event that raises concerns about the maintenance or management of the establishment."

Topic Area II Considered

II. Balance among quality and access to care and cost containment. A regulatory system outcome is that quality of care, access to care and cost containment are balanced in the interest of public/consumer protection. These are factors in regulatory system decisions. For example, if a system is focusing on *quality* of service, it may limit *access* to services or the *cost* of the services may increase to the point of limiting access by the consumer. The goal is to balance the three factors so that the consumer is protected and the State has quality funeral directing and embalming that is accessible.

Topic Area II Discussion

One impact on balance considered by the Committee is that the Funeral Rule does not apply to everyone that sells funeral goods. The Funeral Rule is designed to protect the public. Implementing the Funeral Rule takes resources and is applicable only to the funeral director that not only sells the goods but also provides the service. This means the third party sellers of funeral goods have less regulatory and enforcement issues because the Funeral Rule does not apply to them.

The Committee interviewed Kelly Gruncheon, Executive Director of the Minnesota Funeral Directors Association, by telephone during one meeting. Mr. Gruncheon explained that Minnesota has legislatively incorporated the Funeral Rule into the state statutes. The statutes cover funeral directors, funeral establishments, crematories, cemeteries and third party sellers with an exception that excluded a small number of vendors. Minnesota does not have a state funeral directors board and instead has a state mortuary science section responsible for the regulation and enforcement of statutes, rules and regulations. Minnesota found that incorporating the Funeral Rule was especially positive when it came to enforcement of the Funeral Rule since these cases go through the state system and it is easier to work through the state. When asked, Mr. Gruncheon could not identify anything negative from the funeral director's perspective about incorporating the Funeral Rule into state statute – the benefits are enforcement and education. The process seems to be working for Minnesota; however, Minnesota is one of only approximately three states that have incorporated the Funeral Rule into state statute. It is important to recognize that Minnesota has funding sources not available to Nebraska.

Topic Area II Response

Comment #1: Services to rural Nebraska are essential so that the public has access to the industry. To continue providing basic services throughout the state, many funeral establishments have consolidated and now have branch sites. This means there is a provider of services within a reasonable distance to any customer. Embalming services do not take place at every site.

Comment #2: The Federal Trade Commission (FTC), the Occupational Safety and Health Administration (OSHA) and Environmental Protection Agency (EPA) all have federal requirements for the funeral industry and these have an impact on cost. Strict federal requirements also ensure a minimum level of quality.

Recommendation #4: The Nebraska Funeral Directors Association should study options for incorporating the Funeral Rule into Nebraska statute to see what benefit, if any, exists for public protection. The Funeral Rule is designed to protect the public.

Comment on recommendation #4: The Committee discussed application of the Funeral Rule in Nebraska. Care was taken during this discussion because of concerns that Committee discussions could lead to a discussion of scope of practice and the potential expansion of the scope. Funeral Directors and Embalmers must abide by the Funeral Rule now so there is no impact on the funeral director's scope of practice. However, if the Funeral Rule were put into Nebraska statute so that it included cemeteries and other third party funeral providers, this would be the regulation of a new area and could be considered an expansion or change in scope of practice.

Key points when considering adding the Funeral Rule to statutes for funeral directors and embalmers:

Positive -

- The Funeral Rule is designed to protect the public and is already a major part of regulation for Funeral Directors and Embalmers;
- The Funeral Rule is very inclusive in regulations and consequences and would put the State in a strong position for public protection.
- The State of Nebraska, rather than the federal government, would enforce most violations of the Funeral Rule. The opinion is that state enforcement is more desirable than federal enforcement.
- States rights vs. federal rights - The state and federal regulations may be the same; however, the manner in which the regulations are presented will often make them more palatable. The state is less threatening than the federal government.
- Use of the GPL may have actually helped the profession. Since the GPL must be updated each year, the funeral director must evaluate his expenses and profits and may actually have more management information readily available for decisions about prices.

Concerns-

- If, in the future, significant changes were made to the Funeral Rule, Nebraska statutes for funeral directing and embalming would need to change to adapt. However, as long as the funeral directors are required to abide by the Funeral Rule, that would be necessary regardless.
- The state would be responsible for Funeral Rule inspections and would need to strengthen the state inspection program.
- Cost to implement this change is unknown. This cost would become a part of licensing fees.

Key points when considering adding the Funeral Rule to statutes for funeral directors and embalmers and expanding the Funeral Rule to include other funeral providers:

Positive-

- It would level the playing field. Everyone, funeral directors and other providers selling the same product would be required to provide the GPL.
- Consumers would have the same information, presented in the same format, from all potential providers for pre-need considerations.

Concerns-

- Additional regulation. An area not now regulated would need to be regulated, inspected, and regulations enforced. Is this necessary to protect the public?
- Does the Funeral Rule (for example, the GPL) protect the consumer or would expanding overprotect? Is this an example of overregulation?
- The point was made that people really do not take the time to get a price comparison when dealing with an unplanned death. The GPL is most valuable when pre-need is considered.

- This change would not be applicable to very many cemetery arrangements for perpetual care or pre-need. Would the regulatory impact be sufficient to justify the expense?

Topic Area III Considered

III. Relationship factors promoting public protection (internal/external communication and inter-relationship with other professions, the public, the Department, boards). A regulatory system outcome is that the profession demonstrates positive relationships with the public and collegiality with other professions and organizations – with the focus always on public protection. This topic area looks at the need to work together for public protection in the regulatory system. Communication, interaction and inter-relationships with the department, other boards, funeral director associations (state and national), other professional associations and the public are a necessary part of a quality regulatory system.

Topic Area III Responses

Affirmation #2: The Board of Funeral Directing and Embalming has a good relationship with the Nebraska Funeral Directors Association. The board and association have been able to work through issues, some of which have been of concern for years. Both parties should continue to work at improving and continuing this relationship.

Comment on affirmation #2: An example of this would be with the subject of Cremation. Historically, our state statutes were void of any cremation legislation. The Nebraska Funeral Directors Association, with the assistance of the Board of Funeral Directing and Embalming, drafted and succeeded in passing LB 95, which placed into statute legislation that would cover the cremation process and require the licensing of Nebraska Crematories. This bill addressed an area the profession felt was potentially inadequate in public protection and strengthened the profession's ability to provide better services to its families.

Affirmation #3: The Board of Funeral Directing and Embalming has a good relationship and open communication with the Department. The two have worked together on a number of issues successfully over the years.

Affirmation #4: Involvement by Nebraska professionals at the national level has a positive impact on the profession. The Nebraska Funeral Directors Association is actively involved in state and national regulation development. State representatives have been active at the national level for many years.

Recommendation #5: State agencies should coordinate and communicate better in areas that impact this profession (e.g. pre-need/Department of Insurance; Medicaid/Department of HHS Finance and Support; EPA/Department of Environmental Quality). See Comment #2 on page 19.

Topic Area IV Considered

- IV. Licensure issues, denials, and disciplinary processes.** A regulatory system outcome is that the profession has fair and efficient processes in place to protect the public from unsafe, incompetent or substandard care or services.
- Applications for licenses (initial or reinstatement) should contain information required to make an informed decision. The process should support public safety and protection.
 - The disciplinary process should be supportive of public safety and protection. Information for filing a complaint should be easily accessible to the public and appropriate information on disciplinary actions should be available to the public. The Board of Funeral Directing and Embalming should be aware of and be able to carry out its role in the disciplinary process.
 - The appropriate level of confidentiality related to these processes should be maintained.

Topic Area IV Response

Recommendation #6: The Department should implement the concepts found in the Nebraska Credentialing Reform (NCR) Compliance Assurance Proposal dated August 2001.

Comment on recommendation #6: The NCR Compliance Assurance Proposal would give more authority to the professional board to assure competency in non-disciplinary cases and to create more innovative agreements based on professional knowledge so that the outcome is beneficial both to the licensed person and to public protection.

Recommendation #7: The Department should publish a “Complaint Brochure” providing an easy-to-read and understandable explanation of the complaint and discipline process for the public and the professional.

Topic Area V Considered

- V. Regulatory structure for the profession or occupation.** The regulatory system should undergo periodic evaluation to assess that the regulatory processes are effective, efficient and of high quality in support of public protection.

Topic Area V Response

Affirmation #5: The Board of Funeral Directing and Embalming has an important role in regulation. The board provides essential professional advice to the Department and credentialing staff in matters of the profession’s practice, relevant questions on discipline, licensure issue, and facility inspections. The board also supplies interpretation to the rules and regulations for the profession and works on necessary revisions and improvements.

Affirmation #6: The Board of Funeral Directing and Embalming is willing to take on challenges and be expansive – witness volunteering for the PREP pilot.

Recommendation #8: The Board of Funeral Directing and Embalming should increase from four members to five members.

Comment on recommendation #8: The new member should be another public member (layperson), and during the appointment process, consideration should be given to geographic location and past pastoral/religious experience with the funeral profession.

Topic Area VI Considered

VI. Evaluate if there are other means to ensure public protection in lieu of state government regulation. A regulatory system outcome should result in the assurance that there is a mechanism in place to protect the public adequately. The questions that should be answered are whether the current method of credentialing is the most effective method to protect the public and whether regulation imposes unnecessary barriers to the optimum utilization of personnel.

Topic Area VI Response

Recommendation #9: Funeral Directors and Embalmers should continue to be licensed by the State of Nebraska in the interest of public protection and because of the sensitivity surrounding death.

Topic Area VII Considered

VII. Consider trends/future of the profession – are current statutes, rules and regulations appropriate/adequate/flexible? A regulatory system outcome is that there is the flexibility to adequately protect the public without inhibiting the profession's ability to provide the best possible options as newly developed procedures and technology improvements become available.

Topic Area VII Response

Comment #3: The committee discussed trends and possible future developments in funeral directing. Considerations discussed which may impact funeral directing included: the use of the Internet for purchasing funeral goods and conducting funeral services; increases in funeral home aftercare; increased government regulation; increased personalized funeral services; and the increased impact cremation is having on the industry. The Committee determined the statutes are flexible enough to adapt for potential changes in the industry.

Topic Area VIII Considered

VIII. Other. Perpetual Care and Pre-need have already been mentioned in this report. The Funeral Directing and Embalming PREP Committee is aware that the Department of Health and Human Services Regulation and Licensure, and therefore the Board of Funeral Directing and Embalming, does not have regulatory responsibility for pre-need (Nebraska Department of Insurance administers the pre-need statutes). However, funeral directors are often in a position of interpreting and following through with a purchased pre-need agreement, and are often the first point of contact by a consumer when the consumer has a concern about pre-need or perpetual care agreements. The Committee felt this report would not be complete without addressing this area.

Topic Area VIII Response

Recommendation #10: Consider evaluating regulatory options for private cemeteries in Nebraska in the interest of public protection relevant to perpetual care funds. Considerations could include putting into place statutes, rules and regulations for private cemeteries in Nebraska.

Comment on recommendation #10: Protection of the public without overregulation is the goal. Currently, state government regulates and has administrative responsibilities for the regulation of significant death industry sections (funeral homes, funeral directing and embalming, crematories, pre-need). There are, however, four or five private cemeteries not regulated by state government and without an agency assigned to handle administrative responsibilities for regulation. The focus of the committee discussion was: “Is there enough concern about the protection of the public in this area to support changes?” The committee decided that to make the recommendation for additional study or evaluation of regulatory options for private cemeteries was a reasonable recommendation.

Part of the evaluation in regard to state regulation and the administration of regulations must include the contemplation of financial and staffing resources. Other serious considerations that should be part of the evaluation are the cost of studying the regulatory options, the need for public protection, concerns about overregulation, and the on-going financial impact of adding this regulatory authority.

Recommendation #11: The pre-need statutes could be updated and revisions made so that the statutes are more effective, efficient and pre-need is self-supporting.

Comment on recommendation #11: The pre-need statutes have not been revised since the program started. One method to accomplish a revision would be for state regulators to work with the groups that originally authored the 1986 legislation. There are recommendations available from the National Funeral Directors Association for model language. Some possible revisions that could be discussed include:

- Consider state authority to fine a licensee - not just to revoke a license. Penalty for failure to fund the trust and basic disciplinary issues could be a part of pre-need regulation.
- Consider shortening (less than the current five years) the licensure period. This length of time makes it difficult to track the licensees.
- Consider adding education and continuing competency requirements for individuals receiving a license. Currently there are no education or continuing competency requirements. There is a national certification offered for people who work in pre-need planning and consultation (CPC credential). The lack of education and continuing competency requirements for pre-need licensees is a concern in other states as well.
- Consider an increase to the licensure fee. The fees (\$10) have not changed, yet expenses have increased. Raise the licensure fees to a level that will support the revised pre-need program.
- Consider current pre-need requirements and verify the need for these requirements (e.g. with financial statements). Pre-need requirements were designed to provide the best possible information to protect the public. It is possible that some requirements have not served the expected purpose and should be changed. There should be a clear and valid reason for any requirement.
- Consider making the trusts 100% OR put limits on how much of the 15% can be taken at very beginning (none in first 30 days/5% for first year, etc.). During discussion it was pointed out that a small fee could be collected (example: \$1.50 collected from each funeral) and placed into a guarantee fund to replace money being misappropriated. If a family receives money from the guarantee fund and later recovers any of the lost funds, the family would pay back to the guarantee fund the amount recovered. Since large funeral homes often use the 15% for commissions to sales people, they would probably have concerns about this change. Discussion included that when an account is transferred from another city/funeral home, the new account manager does not always get a copy of the original contract or know what funds were already taken out relevant to the 15%, growth rate for contract, etc.

General Comments

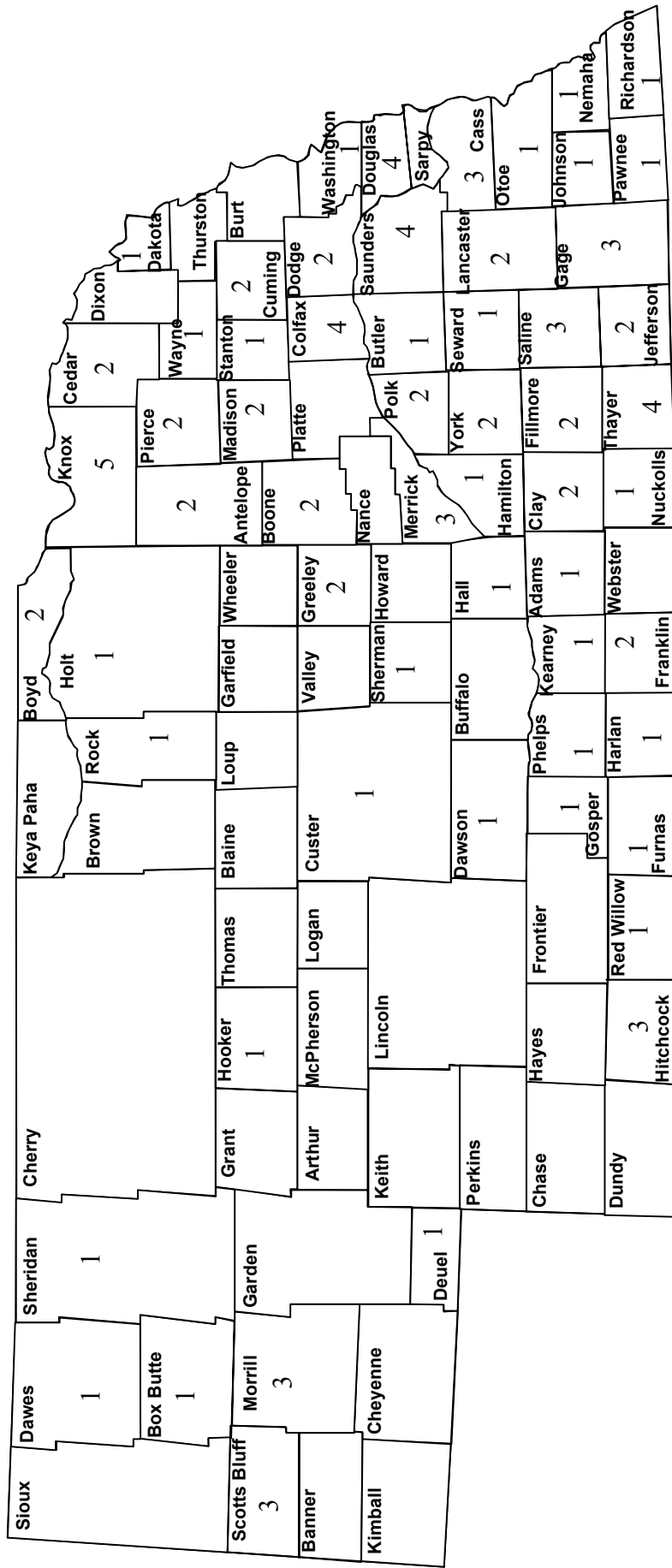
Scope of Practice: All health professions and occupations must have a scope of practice. One of the goals of PREP is to evaluate effectiveness and efficiency in relation to public protection – not to evaluate the profession or occupation scope of practice itself. However, information provided in the scope of practice must be considered in order to evaluate the regulation of the profession or occupation. The PREP Committee may note scope of practice issues in its report, but specific recommendations for changes to the scope of practice are not a part of the PREP. It is possible that one PREP recommendation may be that there should be a Scope of Practice credentialing review.

The committee acknowledges that the board is working on and will continue to work on many of the issues identified here. The committee encourages the communication between boards so that as one discovers something that works, other boards are informed.

END

[illegible]

Branch Establishments



Funeral Directing and Embalming Self-Assessment Document SUMMATION

Self-assessment was completed by the Board of Funeral Directing and Embalming members and assigned department staff (5 surveys were returned). Given the numbers, we noted when two of the five indicated significantly different answers.

Questions about Qualifications to obtain and maintain the credential – Standard for entry:

- General: No major concerns seem indicated.
- Comment: Pre-education does not fit with current standards and overlaps with mortuary training.

Questions about Qualifications to obtain and maintain the credential – Measure for maintaining – continued competency:

- Concern: Opportunities for continued competency are varied and appropriate for the practice.
- Comments: We have worked on the hours and methods to gain extra hours of education at meetings, etc. While the continued education currently focuses on Embalming and Funeral Directing practice, it does not address the “business” end of any funeral business, such as management and accounting. The board is working on broadening the continued competency opportunities through its regulations.

Questions about Qualifications to obtain and maintain the credential – Practitioner mobility:

- Concern: Nebraska regulations affect the ability of a practitioner to change practice settings from another state to Nebraska.
- Comments: There have been times this is unclear. The law requires that those applying for reciprocity meet the same/similar requirements as those practitioners who obtain their initial credential in Nebraska. Most states do not require the pre-education that Nebraska does; therefore, many times a person must pick up additional college hours (basics). This is costly and time consuming to the applicant, and does not appear to have a direct relationship to someone who has practiced Embalming/Funeral Directing in another state for one or more years.

Questions about the Balance of quality of care, access to care, and cost containment:

- Agreement: The regulation has an effect on the costs of services to the public (included to clarify if this is a positive regulatory impact).
- Agreement: The regulation has an effect on availability of practitioners (included to clarify if this is a positive regulatory impact).
- Concern: In different locations of the state, there are differences in service quality for the same services (the same service does not have the same level of quality in different parts of the state).
- Comments: I’m judging this on some comments I have heard.

Questions about Profession or occupation's relationship with the public and other professions.

- General: Agreement that the profession helps the public identify qualified practitioners and has established guidelines for good practice available to the public with processes in place to link people to needed services. Good relationship with the professional association.

Questions about Licensure issues, denials, and discipline process:

- Concern: Typically, the board, attorneys general, and the Chief Medical Officer or Director agree on disciplinary actions.
- Comment: I believe, as a whole, the profession does well to protect the public.

Questions about Regulatory structure for the profession or occupation:

- Concern: Is there sufficient public representation on the regulatory board?
- Concern: Is the composition of the current regulatory board appropriate?
- Concern: Are there sufficient numbers and level of staff assigned to support work of board?
- Concern: Board use/non-use of sub-committee(s).
- Comments: The number of regulatory board members should be 5; currently, the regulatory board is all males. Might consider gender or ethnic options given the various cultures and religious requests in this industry. Three or four regulatory board members have to travel and stay overnight to attend meetings.

Questions about Evaluating means to ensure public protection:

- General: Most agree that credentialing (state regulation) is effective in protecting the public.
- Concern: The regulation imposes unnecessary barriers to the optimum utilization of personnel.
- Comments: Reciprocity regulation needs to be addressed.

A complete question-by-question (65 questions) summary is available upon request.